IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1475 OF 1998.

The Board of Trustees of the Port of Bombay, a statutory corporate constituted under the provisions of the Major Port Trust Act, 1963 as amended by the Major Port Trusts (Amendment) Act, 1974, having their principal place of business at Vijay Deep, Shoorjee Vallabhdas Marg, Bombay 400 038. ... Plaintiff.

Versus.

M/s.Combined Transport Systems, a firm carrying on business at ITTS House, 6th floor, K.Dubhash Marg, Mumbai 400 023. ... Defendant.

Ma.Priti Shah i/by M/s.Mulla & Mulla C.B.C. for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 2nd August, 2007.

ORAL JUDGMENT.:

1. The suit is listed under the caption of "undefended Suits for exparte decree". The learned Counsel appearing for the Plaintiff has tendered on record an affidavit of evidence of shri Satish Kumar, the Assistant Docks manager and Principal Officer of the Plaintiffs. The affidavit is marked "X" for identification and is taken on record. The learned Counsel has also tendered a compilation of original documents. The said compilation is taken on record and marked "Y" (Collectively).

2. The Plaintiff is a Board constituted under the Major Port Trusts Act, 1963. The Defendants are carrying on business interalia as agents of the vessels which discharge goods at the Port of Mumbai and receive goods for the purpose of export. The Plaintiffs are the owners of the docks at Bombay.

3. By letter dated 29th November 1995 the Defendants informed the Plaintiffs that they had been appointed as the agents for M/s.Welgrowe Line Pte.Ltd. for operating their NVOCC operations at the Port of Bombay. On the request made by the Plaintiffs, the Defendants supplied a copy of the agreement dated 16th October 1995 executed by and between the Defendants and their principals. A copy of the bank guarantee furnished by the Defendants to the Collector of Customs as well as a copy of the partnership deed along with a bank guarantee for Rs.2 lakhs dated 25th July 1995 issued by the Allahabad Bank in favour of the Plaintiffs were submitted by the Defendants to the Plaintiffs.

4. According to the case of the Plaintiffs while acting as agents for various liners, the Defendants have incurred liability for payment of Port Trust charges. As the Defendants did not pay in response to the letters given by the Plaintiffs, by their letter dated 31st October 1997 the Plaintiffs called upon the Defendants

to pay the outstanding amount of Rs.1,22,537/-. The first claim in the suit is for the said amount.

5. According to the case of the Plaintiffs one import loader container No.TOLU-3020189 is still lying in the docks after being discharged by the Defendants. According to the case of the Plaintiffs the container is accruing rent at the rate of U.S.$ 2.5 per day and will continue to accrue at the said rent till the container is cleared. The second prayer is for recovery of the said amount at the rate of R.S.$ 2.5 per day from the date of the suit till the said container is cleared from the premises of the Plaintiffs. In the affidavit filed by the said Satish Kumar it is stated that the cargo inside the container was sold by the Customs and the empty container was sold by the Plaintiffs on 7th July 2004.

6. The claim of the Plaintiffs in the suit has been duly proved by the affidavit of Shri Satish Kumar. The documents produced along with the affidavit are also duly proved by the affidavit of Shri Satish Kumar. So far as the second prayer is concerned, in paragraph 7 of the affidavit it is stated that as of 2nd August 2007 the total amount payable in terms of prayer clauses (a) and (b) (excluding interest) is Rs.4,66,957/-.

7. The Plaintiffs have prayed for future interest at the rate of 18% per annum. The prayer for interest is made only on the claim of Rs.1,57,843/-. Considering the facts and circumstances of the case and considering the fact that there is no agreement between the parties as regards payment of interest at a particular rate, further interest deserves to be granted at the rate of 6% per annum.

8. Hence the Defendants are ordered and decreed to pay to the Plaintiffs a sum of Rs.4,64,957.00 together with interest payable on the sum of Rs.1,57,843/- at the rate of 6% per annum from the date of the suit till payment or realisation. The Plaintiffs will be entitled to proportionate costs of the suit from the Defendants.

9. The Plaintiffs will be entitled to the refund of Court fee, if any, in accordance with the Rules.

10. Certified copy is expedited.

Judge.